

REQUIRES MONITORING
OR STAFF ACTION

COMMISSION DIRECTIVE

ADMINISTRATIVE MATTERS ☐

DATE November 1, 2005

MOTOR CARRIER MATTERS ☐

DOCKET NO. 2005-210-E

UTILITIES MATTERS ☒

SUBJECT:

DOCKET NO. 2005-210-E - Application of Duke Energy Corporation for Authorization to Enter into a Business Combination Transaction with Cinergy Corporation – *Discuss this matter with the Commission.*

COMMISSION ACTION:

Mr. Chairman, based on the testimony and my review of the written responses to follow-up questions submitted to the parties by this Commission, it appears that the Duke/Cinergy business combination and the proposed Stipulations signed by Duke, the South Carolina Energy Users Committee, the Office of Regulatory Staff and the Cooperatives will be beneficial to South Carolina stakeholders. I understand that if the Commission should decide to approve the merger, we will be the first state commission to approve this merger. After hearing the testimony and reviewing the materials submitted, I am persuaded that approval of the merger is in the public interest. I believe that Duke's expansion will help it and this state to prosper in the new regulatory environment of the Energy Policy Act. Furthermore, this expansion is not being achieved at the expense of Duke's South Carolina customers or employees.

Therefore, I move that the Commission approve the Duke/Cinergy business combination as being in the public interest. Further, I move that the Commission adopt the Stipulation signed by Duke, the South Carolina Energy Users Committee, and the Office of Regulatory Staff and the Stipulation signed by Duke and the Cooperatives, as adoption of those Stipulations is in the public interest.

PRESIDING Mitchell

	MOTION	YES	NO	OTHER	APPROVED	<input type="checkbox"/>
					APPROVED STC 30	<input type="checkbox"/>
CLYBURN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Absent	DAYS	
FLEMING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		ACCEPTED FOR FILING	<input type="checkbox"/>
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		DENIED	<input type="checkbox"/>
HOWARD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Absent	AMENDED	<input type="checkbox"/>
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		TRANSFERRED	<input type="checkbox"/>
MOSELEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		SUSPENDED	<input type="checkbox"/>
WRIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		CANCELED	<input type="checkbox"/>
					SET FOR HEARING	<input type="checkbox"/>
					ADVISED	<input type="checkbox"/>
					CARRIED OVER	<input type="checkbox"/>
					RECORDED BY	<u>JBS</u>

Session: Regular

Time of Session 2:30 PM

Commissioner Clyburn and Commissioner Howard were attending NAWC, National Drinking Water Symposium, in Colorado Springs, Colorado

Chairman Mitchell's Statement

I would like to speak in support of Commissioner Fleming's motion, and in support of approving the merger.

First, I note that the expenses of this merger will not cost Duke's customers anything because the direct expenses associated with the merger will be excluded from retail cost of service for ratemaking purposes. Any increases in Duke's debt rates because of downgrading as a result of the merger will be removed for retail ratemaking purposes.

In fact, under the proposal before us, retail electric base rates will be reduced for one year by \$40 million. Also, Duke will extend its bulk power marketing profit sharing through Advance SC for an additional three years until December 31, 2010. Furthermore, the increased efficiencies resulting from the merger should actually help to keep retail rates in South Carolina below the national average.

Also, the "most favored nation" status given to South Carolina will ensure that the percentage of net savings resulting from the merger which flow to South Carolina will be at least equal to the percentage of net savings flowing to any other affected state.

Finally, no significant employment losses are expected to result from the merger in South Carolina. Line workers and rank and file employees in our state should not be affected.

For these reasons, I recommend approval of the settlement and support the motion.

Commissioner Hamilton's Remarks

Mr. Chairman, I also would like to speak in support of this motion. I believe that the Commission should move forward and approve this merger as being in the public interest.

Duke has exercised its business judgment to decide that it should merge with Cynergy. It appears to me that Duke is exercising sound business judgment in entering this agreement. However, as a Commissioner, I also must be sure that the interests of Duke's South Carolina customers are protected by necessary safeguards in the merger proposal. I believe those safeguards are in place.

Specifically, I would refer you to the following aspects of the merger proposal:

- Since each utility will operate as a stand-alone business having its own books and records, the operations, books and records of Duke Power will remain virtually the same as today.
- An auditing of the books and records of Duke Power would reveal any cross-subsidization of other utility subsidiaries by South Carolina ratepayers. In other words, South Carolina's customers won't pay to subsidize Duke's other operations.
- Also, the most favored nation clause in the merger proposal ensures that we will benefit from any terms which Duke extends to other states. There is no "down side" to being the first state to approve the merger.

Therefore, I urge the Commission to approve the merger.